

AMENDED IN SENATE AUGUST 31, 2015

AMENDED IN SENATE AUGUST 19, 2015

AMENDED IN ASSEMBLY APRIL 21, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 786**

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**Introduced by Assembly Member Levine**  
**(~~Coauthor: Assembly Member Cooley~~)**  
**(~~Coauthor: Senator Allen~~)**

February 25, 2015

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An act to amend Section 4735 of the Civil Code, relating to common interest developments, and declaring the urgency thereof, to take effect immediately.

### LEGISLATIVE COUNSEL'S DIGEST

AB 786, as amended, Levine. Common interest developments: property use and maintenance.

The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments. Existing law provides that, unless otherwise provided in the common interest development declaration, the association is responsible for repairing, replacing, or maintaining the common area, other than exclusive use common area, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to that interest. Existing law makes void and unenforceable any provision of the governing documents or architectural or landscaping guidelines or policies that prohibits use of low water-using plants, or prohibits or restricts compliance with

water-efficient landscape ordinances or regulations on the use of water, as specified.

Existing law also prohibits an association, except an association that uses recycled water for landscape irrigation, from imposing a fine or assessment on separate interest owners for reducing or eliminating watering of vegetation or lawns during any period for which the Governor has declared a state of emergency or the local government has declared a local emergency due to drought.

This bill would ~~limit~~ *revise* that exception to ~~only associations that use recycled water for all home and common area~~ *instead authorize the owner of a separate interest to be fined or assessed if the property subject to the fine or assessment has previously received, and continues to receive, recycled water for landscaping irrigation.*

This bill would incorporate additional changes to Section 4735 of the Civil Code proposed by AB 349 that would become operative if this bill and AB 349 are enacted and this bill is enacted last.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares that due to
- 2 the ongoing emergency drought conditions the ~~State~~ *state* should
- 3 maximize opportunities to conserve potable water, including
- 4 encouraging homeowners to limit ~~water-intensive~~ *the watering of*
- 5 *outdoor* landscaping and removing all impediments to that goal.
- 6 SEC. 2. Section 4735 of the Civil Code is amended to read:
- 7 4735. (a) Notwithstanding any other law, a provision of the
- 8 governing documents or architectural or landscaping guidelines
- 9 or policies shall be void and unenforceable if it does any of the
- 10 following:
- 11 (1) Prohibits, or includes conditions that have the effect of
- 12 prohibiting, the use of low water-using plants as a group or as a
- 13 replacement of existing turf.
- 14 (2) Has the effect of prohibiting or restricting compliance with
- 15 either of the following:

1 (A) A water-efficient landscape ordinance adopted or in effect  
2 pursuant to subdivision (c) of Section 65595 of the Government  
3 Code.

4 (B) Any regulation or restriction on the use of water adopted  
5 pursuant to Section 353 or 375 of the Water Code.

6 (b) This section shall not prohibit an association from applying  
7 landscaping rules established in the governing documents, to the  
8 extent the rules fully conform with subdivision (a).

9 (c) Notwithstanding any other provision of this part,~~an~~  
10 ~~association, except as provided in subdivision (d), an association~~  
11 ~~where recycled water, as defined in Section 13050 of the Water~~  
12 ~~Code, is used for all home and common area landscaping irrigation,~~  
13 shall not impose a fine or assessment against an owner of a separate  
14 interest for reducing or eliminating the watering of vegetation or  
15 lawns during any period for which either of the following have  
16 occurred:

17 (1) The Governor has declared a state of emergency due to  
18 drought pursuant to subdivision (b) of Section 8558 of the  
19 Government Code.

20 (2) A local government has declared a local emergency due to  
21 drought pursuant to subdivision (c) of Section 8558 of the  
22 Government Code.

23 (d) *An owner of a separate interest may be subject to a fine or*  
24 *assessment if the property subject to the fine or assessment has*  
25 *previously received, and continues to receive, recycled water, as*  
26 *defined in Section 13050 of the Water Code, for landscaping*  
27 *irrigation.*

28 SEC. 2.5. Section 4735 of the Civil Code is amended to read:

29 4735. (a) Notwithstanding any other law, a provision of the  
30 governing documents or architectural or landscaping guidelines  
31 or policies shall be void and unenforceable if it does any of the  
32 following:

33 (1) Prohibits, or includes conditions that have the effect of  
34 prohibiting, the use of low water-using plants as a group or as a  
35 replacement of existing turf.

36 (2) Prohibits, or includes conditions that have the effect of  
37 prohibiting, the use of artificial turf or any other synthetic surface  
38 that resembles grass.

39 (3) Has the effect of prohibiting or restricting compliance with  
40 either of the following:

1 (A) A water-efficient landscape ordinance adopted or in effect  
2 pursuant to subdivision (c) of Section 65595 of the Government  
3 Code.

4 (B) Any regulation or restriction on the use of water adopted  
5 pursuant to Section 353 or 375 of the Water Code.

6 (b) This section shall not prohibit an association from applying  
7 landscaping rules established in the governing documents, to the  
8 extent the rules fully conform with subdivision (a).

9 (c) Notwithstanding any other provision of this part, ~~an~~  
10 ~~association, except as provided in subdivision (d), an association~~  
11 ~~where recycled water, as defined in Section 13050 of the Water~~  
12 ~~Code, is used for all home and common area landscaping irrigation,~~  
13 shall not impose a fine or assessment against an owner of a separate  
14 interest for reducing or eliminating the watering of vegetation or  
15 lawns during any period for which either of the following have  
16 occurred:

17 (1) The Governor has declared a state of emergency due to  
18 drought pursuant to subdivision (b) of Section 8558 of the  
19 Government Code.

20 (2) A local government has declared a local emergency due to  
21 drought pursuant to subdivision (c) of Section 8558 of the  
22 Government Code.

23 (d) *An owner of a separate interest may be subject to a fine or*  
24 *assessment if the property subject to the fine or assessment has*  
25 *previously received, and continues to receive, recycled water, as*  
26 *defined in Section 13050 of the Water Code, for landscaping*  
27 *irrigation.*

28 ~~(d)~~

29 (e) An owner of a separate interest upon which water-efficient  
30 landscaping measures have been installed in response to a  
31 declaration of a state of emergency described in subdivision (c)  
32 shall not be required to reverse or remove the water-efficient  
33 landscaping measures upon the conclusion of the state of  
34 emergency.

35 SEC. 3. Section 2.5 of this bill incorporates amendments to  
36 Section 4735 of the Civil Code proposed by both this bill and  
37 Assembly Bill 349. It shall only become operative if (1) both bills  
38 are enacted and become effective, (2) each bill amends Section  
39 4735 of the Civil Code, and (3) this bill is enacted after Assembly

1 Bill 349, in which case Section 2 of this bill shall not become  
2 operative.

3 SEC. 4. This act is an urgency statute necessary for the  
4 immediate preservation of the public peace, health, or safety within  
5 the meaning of Article IV of the Constitution and shall go into  
6 immediate effect. The facts constituting the necessity are:

7 California is in a state of emergency because of the continued  
8 drought. In response, Governor Brown issued Executive Order  
9 B-29-15, ordering a 25 percent statewide reduction in urban water  
10 consumption. Because residential landscaping accounts for 35  
11 percent or more of the average urban water usage statewide, many  
12 homeowners have voluntarily ceased watering landscaping in order  
13 to assist with the drought emergency. However, some homeowners  
14 associations have interpreted existing law to allow them to fine  
15 homeowners who voluntarily cease using potable water on their  
16 landscaping if the homeowners association itself is using a de  
17 minimis amount of recycled water on common areas. This is  
18 directly contrary to the state's need to conserve the precious and  
19 dwindling water supplied for urban, agricultural, and environmental  
20 needs.